

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VENTANA MEDICAL SYSTEMS INC.,

Plaintiff,

v.

DAKOCYTOMATION CALIFORNIA INC.,

Defendant.

C. A. No. 04-1522-GMS

**DECLARATION OF SCOTT LEON IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OF NONINFRINGEMENT**

I, Scott Leon, declare, under penalty of perjury, that the following statements are true, to the best of my knowledge, information, and belief:

1. I am currently the Director of Operations for DakoCytomation Colorado, Inc. ("Dako"), an affiliate of the defendant in this litigation.
2. I Have Bachelor's of Science in mechanical engineering from Northeastern University and an MBA from Suffolk University.
3. After graduating from Northeastern in 1984, I worked for the U.S. Army as a project manager for about four years, then for two defense contractors for a couple of years, and then for a medical device instrumentation company called P.B. Diagnostics for about nine years.
4. In 1998, I began working for CytoLogix, Inc., in Cambridge, Massachusetts, as the Engineering Manager and Manufacturing/Engineering Manager. CytoLogix was the company which developed and first marketed the Artisan® Staining System, the product accused of infringement in this litigation.

5. When the Artisan® product line was acquired by Dako, I became an employee of Dako.

In 2003, I became the Director of Research & Development for Dako, and in March 2005, I was promoted to my current position, Director of Operations.

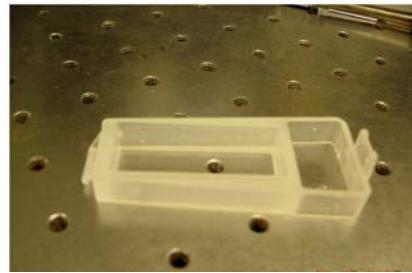
6. Since I began working for CytoLogix in 1998, I have been involved with the Artisan® product. Until mid 2003, I was in charge of engineering for the Artisan®. All of the engineers working on the Artisan® reported to me, including the software group, the mechanical group, and the electrical group. In my current capacity as Director of Operations, the Artisan® is still part of my responsibility.

7. I am familiar with the Artisan® product's components, structure, operation, and software.

8. Both Ventana Medical Systems, Inc. (“Ventana”), and Dako sell instruments that automatically stain tissue samples to help physicians identify morphologies in the sample, such as cancer. Tissue staining involves exposing the tissue to a sequence of chemicals, called reagents, under controlled conditions. In general, the reagents bind to and highlight certain diseased tissue, such as cancer cells, allowing physicians to diagnose the presence of the disease.

9. Historically, tissue staining was performed manually—a technician would sequentially stain each tissue sample individually. Over the past twenty years, however, a number of companies, including Dako and Ventana, have developed sophisticated instruments which automate staining of multiple tissue samples simultaneously, greatly improving the efficiency of diagnostic analysis.

10. The Artisan® uses slides in combination with plastic “slide clips” to form a chamber for holding the tissue sample and reagents. The original version of the Artisan® slide clip is fairly and accurately depicted in the photograph below:

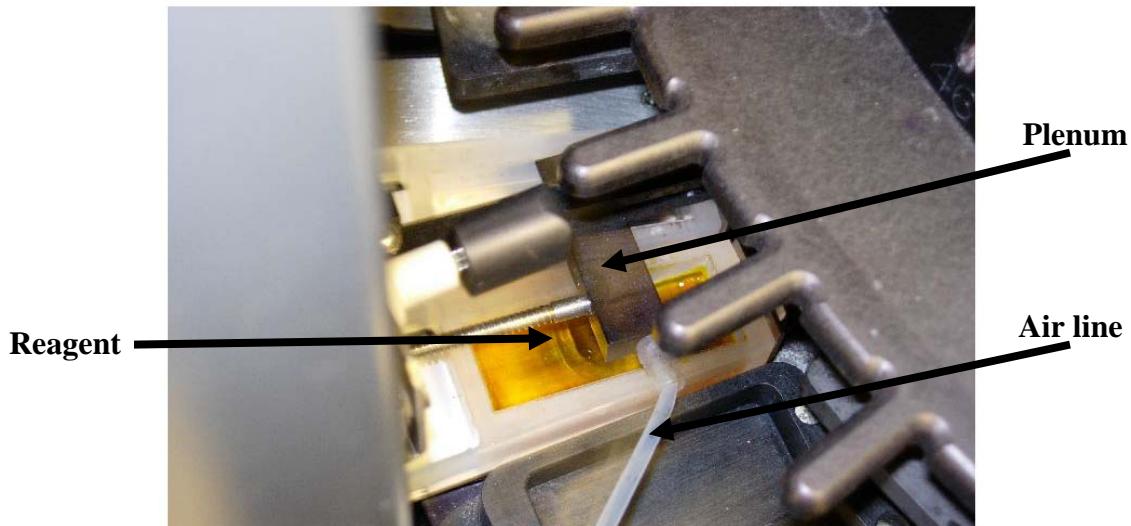


11. There is also a second, newer version of the Artisan's® slide clip. The two versions of the Artisan® slide clip are very similar—they differ primarily in the thickness of certain walls. Both the original and the newer versions of the Artisan® slide clip are fairly and accurately depicted side-by-side in the photograph below:



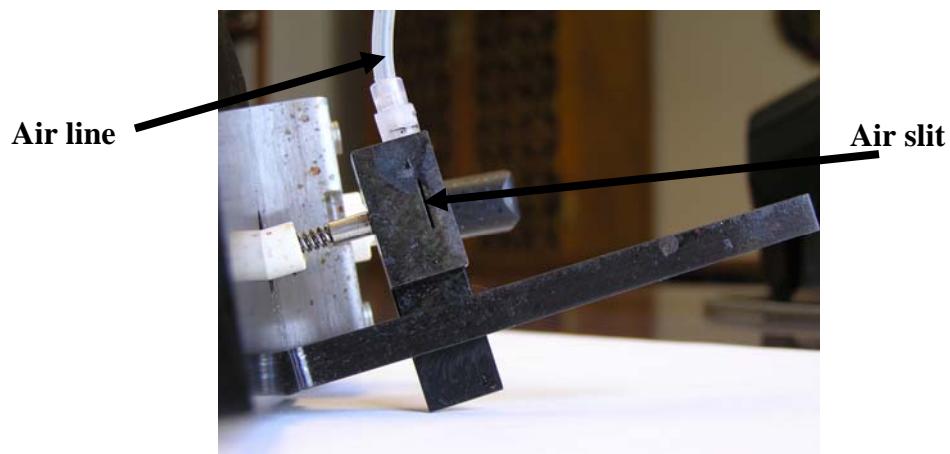
12. The Artisan® directs a curtain of air from directly above the slide clip that mixes and evenly distributes the reagents over the surface of the slide.

13. The air mixing mechanism in the Artisan® is fairly and accurately depicted in the photograph below:



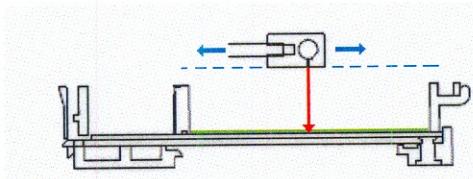
14. The mechanism includes a plenum box positioned above the slide clip and an air line that feeds air to the plenum.

15. In the bottom of the plenum box is a slit opening, about 10-20 thousandths of an inch wide, through which the air blows. The plenum and slit are fairly and accurately depicted in the photograph below:



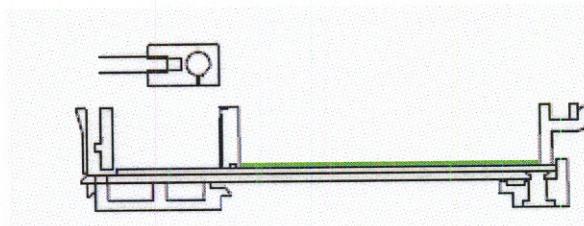
16. In operation, the plenum moves horizontally back and forth above the slide clip, blowing a curtain of air down onto the chamber holding the sample and reagents. This air curtain causes waves to form in the reagent pool, which spread and mix the fluid. The waves are visible in the gold-colored reagent pool in the photograph shown in ¶ 13 above.

17. The graphic below fairly and accurately depicts the motion of the plenum above the slide clip:



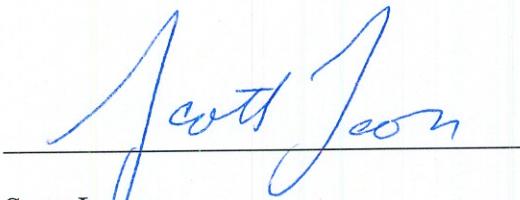
18. At all times, the plenum and its air slit are located above the “reagent agitation zone,” (colored green).

19. The graphic below fairly and accurately depicts the plenum of the Artisan® in its “home,” or starting position:



20. In the “home” position shown in ¶ 19 above, the air slit in the plenum is not directing a jet of air at the reagent agitation zone or inducing mixing of the reagents.

DATED: 15 March 2006



Scott Leon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on that on March 16, 2006, I electronically filed the foregoing DECLARATION OF SCOTT LEON IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF NONINFRINGEMENT with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

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I HEREBY CERTIFY that on March 16, 2006, I mailed via Federal Express, the foregoing DECLARATION OF SCOTT LEON IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF NONINFRINGEMENT to the following non-registered participants:

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